IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs August 21, 2009

GREGORY POTTER v. MELBA ESPINOSA, ET AL.

Appeal from the Circuit Court for Davidson County
No. 06C-101 Hamilton V. Gayden, Judge

No. M2008-02542-COA-R3-CV - Filed October 21, 2009

Gregory Potter ("the Plaintiff"), an inmate in the custody of the Tennessee Department of Correction ("the Department"), filed a complaint in the trial court pursuant to 42 U.S.C. § 1983 (2003).[1] The court entered an order of dismissal upon finding that the Plaintiff had failed to exhaust his administrative remedies through the prison grievance process. The Plaintiff moved for relief from the judgment claiming that it was "legally erroneous." The trial court denied the motion upon finding that the Plaintiff's motion did not entitle him to relief under Tenn. R. Civ. P. 60.02. The Plaintiff appeals. We vacate the trial court's order of dismissal and remand for further proceedings.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Vacated; Case Remanded.

CHARLES D. SUSANO, JR., J., delivered the opinion of the court, in which D. MICHAEL SWINEY and JOHN W. MCCLARTY, JJ., joined.

Gregory Potter, Mountain City, Tennessee, appellant, Pro se.

Robert E. Cooper, Jr., Attorney General and Reporter; Michael Moore, Solicitor General; Pamela S. Lorch, Senior Counsel; Nashville, Tennessee, for the appellees, Melba Espinosa and Roland Colson.

OPINION

I.

In his complaint, the Plaintiff claimed that his First Amendment right of access to the courts was violated by a prison law clerk, who allegedly refused to assist him in filing an appeal from the dismissal of a federal habeas corpus petition. The Plaintiff sued Melba Espinosa and Roland D.

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[1] 42 U.S.C. § 1983 provides a remedy to redress the deprivation, under color of state law, of "rights, privileges, or immunities secured by the Constitution. . . ."

Colson ("the Defendants"), both of whom are officials of the Department, in their individual capacities. He attached to his complaint a copy of his filled-out "inmate grievance" form. The grievance did not name either of the defendants or make any allegations with respect to them. The Defendants filed a motion to dismiss pursuant to the "Prison Litigation Reform Act," 42 U.S.C.A. § 1997e(a) (2003) ("the Act"). In general terms, the Act requires a prisoner to exhaust all available administrative remedies before initiating suit regarding prison conditions under 42 U.S.C.A. § 1983 or any other federal law. The Plaintiff responded in opposition. On November 28, 2006, the Defendants submitted a proposed order of dismissal to the trial court and mailed a copy to the Plaintiff. On December 4, 2006, the trial court dismissed the Plaintiff's complaint for failure to exhaust his administrative remedies. More specifically, the trial court stated that the "[Plaintiff's] grievance fails to name [the Defendants] or discuss what these defendants did in alleged violation of his civil rights." No direct appeal was taken.

Six months later, the Plaintiff filed a motion for relief from judgment[2] in which he asserted that the judgment of dismissal was "based on a clear misunderstanding of Federal law." More specifically, the Plaintiff argued that "intervening decisions make[ ] it clear that [the trial court's] dismissal of [the Plaintiff's] complaint as failing to exhaust administrative remedies by not naming Defendants in [the Plaintiff's] grievance was erroneous." The Plaintiff relied on the law as "clarified" in ***Jones v. Bock***, 549 U.S. 199, 127 S.Ct. 910 (2007), a decision released January 22, 2007.

In denying the Plaintiff's motion, the trial court found that he failed to show that his case met any of the criteria of Tenn. R. Civ. P. 60.02. Plaintiff filed a timely appeal.

II.

Plaintiff raises a single issue: Whether the trial court erred in denying the Plaintiff's motion for relief from judgment.

III.

This appeal presents an issue of law. Accordingly, we review the trial court's decision *de novo* with no presumption of correctness as to the trial court's conclusions of law. ***Brumit v. Brumit***, 948 S.W.2d 739, 740 (Tenn. Ct. App. 1997). Relief granted or denied pursuant to Rule 60.02 is in the sound discretion of the trial court. ***Underwood v. Zurich Ins. Co.***, 854 S.W.2d 94, 97 (Tenn. 1993). Under the abuse of discretion standard, a trial court's ruling "will be upheld so long as reasonable minds can disagree as to the propriety of the decision made." ***Eldridge v. Eldridge***, 42 S.W.3d 82, 85 (Tenn. 2001) (citations omitted). A trial court abuses its discretion when it "applies an incorrect legal standard, or reaches a decision which is against logic or reasoning or that causes an injustice to the party complaining." ***Id***.

[2] We observe that the Plaintiff moved for relief in the trial court pursuant to "Fed. R. Civ. P. 60(B)." The Defendants and the trial court construed the motion as one filed pursuant to Tenn. R. Civ. P. 60.02, as do we.

IV.

Tenn. R. Civ. P. 60.02 provides, in pertinent part, as follows:

> On motion and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment, order or proceeding for the following reasons: (1) mistake, inadvertence, surprise or excusable neglect; (2) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (3) the judgment is void; (4) the judgment has been satisfied, released or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that a judgment should have prospective application; or (5) any other reason justifying relief from the operation of the judgment.

Under Rule 60.02, a court is authorized to relieve an aggrieved party from a final judgment under limited circumstances. "While Rule 60.02 is not limited to any particular type of judgment, the bar for attaining relief is set very high and the burden borne by the movant is heavy." ***Johnson v. Johnson***, 37 S.W.3d 892, 895 (Tenn. 2001)(citing ***Federated Ins. Co. v. Lethcoe***, 18 S.W.3d 621, 624 (Tenn. 2000)). We have concluded that the trial court abused its discretion when it unwittingly – but understandably – applied an erroneous principle of law.

V.

In the ***Jones*** case, the United States Supreme Court considered multiple consolidated cases with varying fact patterns to determine whether procedural rules imposed by the Sixth Circuit Court of Appeals went beyond the scope of the Act. The Act was passed by Congress to deal with the swelling number of prisoner civil rights cases brought predominately under 42 U.S.C. § 1983. The principal feature of the Act is that it "requires prisoners to exhaust prison grievance procedures before filing suit." 42 U.S.C. § 1997e(a). The Sixth Circuit had established rules in addition to those mandated by the prisons. The Sixth Circuit imposed (1) a requirement that the plaintiff allege affirmatively that he or she had exhausted administrative remedies; (2) a requirement that the plaintiff name all potential defendants in the grievance, regardless of whether the prison's grievance policy required naming them; and (3) a requirement that all administrative remedies against all potential defendants be exhausted, the penalty being dismissal of all defendants for failure to exhaust any administrative remedies against any one of the defendants.

The Supreme Court in ***Jones*** held that the Sixth Circuit exceeded the "proper limits on the judicial role" when it imposed additional procedural rules; in other words, that the Sixth Circuit went beyond the requirements imposed by the Act. 127 S.Ct. at 914. The High Court began by acknowledging that "exhaustion is mandatory under the [Act] and that unexhausted claims cannot be brought in court." ***Id***. at 918-19. As viewed by the Court in ***Jones***, the screening mechanisms

employed by the Sixth Circuit were the problem. As to the pleading requirement, the Court held that this was controlled by the Federal Rules of Civil Procedure. According to the Supreme Court, courts are not free to impose new requirements for disfavored cases. As to the "total exhaustion requirement" the Court treated the question as one of statutory construction and simply disagreed with the Sixth Circuit's reading of the Act as allowing courts to dismiss all claims for failure to exhaust remedies as to any one alleged wrongdoer.

The rule that impacts the instant case was stated as follows: "The Sixth Circuit requires that a prisoner have identified, in the first step of the grievance process, each individual later named in the lawsuit to properly exhaust administrative remedies." ***Id***. at 915. The district court in ***Jones*** dismissed the 1983 actions brought by prisoners Timothy Williams and John Walton under the second Sixth Circuit rule identified above, *i.e.*, the one that required naming defendants in the grievance. Williams "had not identified any of the respondents named in his lawsuit during the grievance process." ***Id***. at 917-18. Walton "had not named any respondent other than [one] in his grievance." ***Id***. at 918. It is true that "to properly exhaust administrative remedies prisoners must 'complete the administrative review process in accordance with the applicable procedural rules.' " ***Id***. at 922. However, the prison policy "did not contain any provision specifying who must be named in a grievance." ***Id***. Neither did the Act. The "procedural rule lacks a textual basis in the [Act]." ***Id***. The bottom line is that "it is the prison's requirements, and not the [Act], that define the boundaries of proper exhaustion." ***Id***. at 923. The Court held that the Sixth Circuit *per* se rule went too far. The Court left it to the trial court on remand to "determine the sufficiency of the exhaustion in these cases." ***Id***.

The issue for us becomes whether the trial court in the present case applied a *per se* rule or correctly found a failure to exhaust the rules imposed by the prison at which the Plaintiff was incarcerated. If it was the former, the dismissal of the Rule 60 motion should be vacated because the original dismissal was based on an error of law. If not, the dismissal should be affirmed.

It appears clear that the trial court applied the *per se* rule. The original order dismissing the complaint in this case states: "Mr. Potter failed to name the defendants in his prison grievance. Therefore, Mr. Potter may not proceed in his lawsuit against these individuals as he failed to exhaust his administrative remedies against them." The order makes no mention of a prison rule and cites only the erroneous Sixth Circuit's rule. The later order denying Rule 60.02 relief does not even mention ***Jones v. Bock***, much less decide whether it worked a change in the law or simply clarified existing law.

The Defendants argue that the original order of the trial court, entered December 4, 2006, before ***Jones*** was decided in January 2007, was correct when entered, and that, even if it was wrong, an error of law will not justify relief from a judgment. The Defendants' arguments prove too much. It is clear from the record that the trial court was merely following the Sixth Circuit's *per se* rule that a civil rights complaint must be dismissed for failure to exhaust administrative remedies if the underlying grievance does not name the defendants later sued. It is clear from ***Jones*** that this rule was adopted by the Sixth Circuit in excess of the restrictions imposed by any other circuits, and that

the rule had no "textual basis in the [Act]." ***Id***. at 922. We conclude that the Sixth Circuit rule followed by the trial court was never the law – it was always an error.

For the argument that a mistake of law will never justify relief from a judgment, the Defendants rely on ***Spruce v. Spruce***, 2 S.W.3d 192, 195 (Tenn. Ct. App. 1998), and ***Food Lion, Inc. v. Washington County Beer Board***, 700 S.W.2d 893, 896 (Tenn. 1985). Those cases both appear to be addressing the question of whether a mistake in law by a party in allowing a certain judgment to be entered will form the basis for relief afterwards. The courts were not inclined to allow a party to build himself a basis for relief out of his own mistake, because, having accepted that as a ground for relief, "it is hard to conceive how any judgment could be safe from assault on that ground." ***Id***.

This case is different. The Plaintiff did not consent to the original dismissal and did not argue in favor of the law the judge applied. In other words, he did not build this house of cards so that he could later collapse it. This case, we believe, fits within the rule that "[a]n error of law appearing in the body of the decree provides a ground for [Rule 60 relief] but a change in the law will not." ***Penland v. Penland***, 521 S.W.2d 222, 224 (Tenn. 1975). Application of a rule erroneously imposed by the Sixth Circuit was an error of law and not a change in the law.

VI.

The judgment of the trial court is vacated and this case is remanded to the trial court for further proceedings. Costs on appeal are taxed to the Defendants, Melba Espinosa and Roland Colson.

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CHARLES D. SUSANO, JR., JUDGE